IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Gauri Shanker Vs. State of Rajasthan

S.B. Civil First Appeal No.33/1984 against the judgment and decree dated 26.11.1983 passed by Shri Surendra Singh, Additional District Judge No.1, Ajmer in civil suit No. 22/76 (94/75)

***Date of Judgment:*** 06.07.2006

P R E S E N T

**HON'BLE MR. JUSTICE KHEM CHAND SHARMA, J.**

Mr. Amod Kasliwal for the appellant
Mr. Harshvardhan Nandwana, Deputy Govt. Advocate

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This regular civil first appeal under Sction 96 CPC arises out of the judgment and decree dated 26.11.1983 passed by the learned Additional District Judge No.1, Ajmer, thereby dismissing the plaintiff's suit.

The admitted facts giving rise to the present appeal may be summarised hereunder:

The plaintiff appellant Gauri Shanker was initially appointed as Senior Teacher in English in the scale of 200-400 for a period of six months or

till the candidates selected by the Rajasthan Public Service Commission (for short, RPSC) are made available, vide order dated 13.8.1960, Ex.3 passed by the Director, Primary and Secondary Education. Pursuant to the appointment order, the appellant joined services as Senior Teacher on 25.8.1960. The term of appointment of the appellant continued to be extended from time to time with the concurrence of RPSC. Lastly, the appellant's period of service as Senior Teacher was extended with the concurrence of RPSC up till 30.6.1968. With a view to make room for the candidate selected by the RPSC, the Additional Director, Prmary & Secondary Education reverted the appellant to the post of Assistant Teacher vide order dated 16.9.1966. On the same day i.e. on 16.9.1966, the Additional Director issued order Ex.6, appointing 8 Assistant Teachers as Senior Teachers in English on officiating basis for a period of six months or till the candidates approved by the RPSC are made available. Considering the experience and

seniority, the Additional Director, Primary & Secondary Education vide order dated 3.12.1966 promoted the appellant as Instructor in the scale of 225-485, for a period of six months or till the candidates selected by the RPSC are made available. The Additional Director vide order dated 2.8.1967, Ex.2 allowed the plaintiff to cross the efficiency bar w.e.f. 25.8.1966 and raised his pay from Rs. 275 to Rs. 285 in the scale of 225-485.

It appears that prior to reversion vide order dated 16.9.1966, the appellant was drawing his salary at Rs. 275/- on the post of Senior Teacher. However, after his promotion to the post of Instructor the department fixed his pay at the minimum of Rs. 225. Feeling aggrieved by his illegal fixation the appellant submitted representations to the concerned authorities, requesting them to fix his pay at Rs. 285 w.e.f. 8.12.1966, the day when he joined as Instructor, but all in vain. The Addl. Director vide his letter dated 28.9.1974 informed the appellant about

rejection of his claim. It was in these circumstances that the appellant filed a suit for declaration, praying that it may be declared that he is entitled to have his pay fixed at Rs. 285/- in the pay scale of 225-485 w.e.f. 8.12.1966.

The defendant contested the suit by filing written statement and denied the averments made in the plaint. On the basis of pleadings of the parties, the trial court framed following issues:

> 1. Whether the Assistant Teachers mentioned in para 5 of the plaint had been approved by the R.P.S.C. for appontment as Senior Teachers as pleaded in para 5 of the written statement?
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> 2. Whether the plaintiff has been discriminated as alleged in paras 8,10 and 11 of the plaint?
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> 3. Whether the notice under Sec. 80 CPC is illegal
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> 4. Whether the plaintiff's suit is barred by time?
>
> 5. Relief.

At the conclusion of trial, the learned trial court decided Issues No. 1,2 and 3 in favour of the plaintiff appellant. While deciding issue No.1 in

favour of appellant, the trial court held that 8 teachers who were promoted as Senior Teachers on officiating basis were not the RPSC approved candidates, inasmuch as it was admitted by DW1 Prem Chand and was apparent by order dated 16.7.1966 Ex.6. The trial court further held that plaintiff appellant was senior to these 8 officiating senior teachers. The trial court was of the view that plaintiff's reversion to the post of Assistant Teacher was contrary to the conditions mentioned in the order Ex.3. As regards issue No.2, the trial court concluded that plaintiff was discriminated by the Education Department in the matter of regularisation of his services for the period of his reversion. It was held that plaintiff has been discriminated qua R.S. Boob and Kishan Gopal Raipuria, inasmuch as the cases of these two personnels and that of the plaintiff were at par. The notice under Sec. 80 CPC was also held to be valid.

Issue No.4, whether the plaintiff's suit was

barred by limitation has been decided against the plaintiff, considering the fact as if the plaintiff had filed the suit challenging the order of his reversion.

Since suit was found to be barred by limitation, the trial court dismissed the suit. Hence the present appeal.

At the very out set, it may be stated that the relief sought in the suit was with respect to declaration to the effect that plaintiff is entitled to have his pay fixed at 285 in the scale of Rs. 225-485 w.e.f. 8.12.1966 as per the efficiency bar certificate.

It appears that plaintiff was reverted to thepost of Assistant Teacher on 16.9.1966. However, considering his ability and seniority, he was promoted on the post Instructor, which is equivalent to the post of Senior Teacher, in the pay scale of 225-485 for a period of six months or till the candidates approved by the RPSC are made available. The Additional Director, Primary &

Secondary Education vide order dated 2.8.67 (Ex.2) allowed plaintiff Gauri Shanker Sharma, Ex Senior Teacher in English Government S.D.H.S.School, Beawar to cross efficiency bar w.e.f. 25.8.1966, raising his pay from Rs. 275 to 285 in the scale of 225-10-275EB-10-285-15-435-485. In this view of the matter, the plaintiff was entitled to have his pay fixed at Rs. 285 in the scale of 225-485 on 8.12.1966 when he was promoted to the post of Instructor and jointed on the same day. As such there was no question of any challenge to the reversion order. In my considered view that trial court has missed the real point and over looked the crux of the matter. As stated above, the appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recuring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he

is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arresrs calculated on the basis of difference in the pay which has become time barred would not be recovered, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong.

Consequently, the appeal is allowed as indicated above. It is declared that appellant Gauri Shanker Sharms is entitled to have his pay fixed at Rs. 285/- in the pay scale of Rs. 225-485 w.e.f. 8.12.1966. The plaintiff's suit is decreed for arresrs of pay for 3 years preceding the suit with interest at the rate of 6% p.a. till its realisation.

No order as to costs.

(Khem Chand Sharma), J.

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